

ORIGINAL

In the United States District Court
For the District of Hawaii

Anthony Nesbit
Plaintiff

vs.
Dept of Public Safety,
State of Hawaii et al,
Defendants

Civil No. 03-00455 SOM-KSC
Consolidated

Plaintiffs Motion for
Discovery Sanctions and
2nd Enlargement of time
with Exhibits

William J. Kotis
Plaintiff

Civil No. 04-00167 SOM-KSC
Consolidated

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

vs.
Dept of Public Safety
State of Hawaii et al,
Defendants

FEB 07 2006

at 4 o'clock and 25 min. P.M.P.
SUE BEITIA, CLERK

Plaintiffs Motion for Discovery Sanctions and 2nd
Enlargement of time.

Comes Now Plaintiffs Anthony Nesbit and William J. Kotis
pro se and informa pauperis to move this Honorable
Court to issue sanctions and grant Plaintiff's request
for enlargement of time or reasonable alternative that
the Honorable Court can use to resolve Motions, request,
and issues presented herein.

A Motion to Compel Came before this Honorable Court
on December 5th 2005 and an Order from the Honorable
Magistrate Kevin S. Chang was issued December 7th 2005.
A hearing on an unrelated matter by telephone came
in late December 2005 before the Honorable Magis-
trate Kevin S. Chang on which Plaintiff Anthony
Nesbit put forth the question to Defendants Attorney
John M. Creager Jr. on when Plaintiff's can expect

to receive the Ordered Discovery Materials as described in the Magistrate's Order of Dec 7th 2005 the Deputy Attorney General Mr Cheff said on record that they will be produced by January 15th 2006.

As of Yet no Discovery Materials have been produced by defendants (Documents and interrogatories) and it is now Feb 1st 2006. Plaintiffs are faced with a deadline to produce this new evidence (Ordered Discovery Materials) before Feb 16th 2006 in order to support their Opposition to Defendants Motion for Summary Judgment.

Plaintiffs have tried to resolve discovery disputes and have personally written 2 letters to former defendants Attorney that the Ordered Discovery Materials are needed because Plaintiffs are facing time limitations in presenting this evidence before Feb 16th 2006. Plaintiffs request for resolve and/or reply to letters sent were never responded to basically ignoring Plaintiffs attempts to resolve these issues within a reasonable time. (can also be delay tactic)

Plaintiffs are asking for Sanctions and or whatever alternative the Honorable Court deems fit in order to resolve Ordered discovery Materials. Plaintiffs believe that defendants are frustrating the discovery process intentionally knowing that aside from time limitations to produce discovery items no se eminate are limited in acquiring Copies, research law library time, timely Copies (this also requires additional time making it extremely difficult to adequately litigate in the time frame Plaintiffs are facing).

There also is a issue that only the Honorable Court can clarify and in the Honorable Courts Order of December 7th 2005 at pages 8 and 9- Quote-

"Defendants have agreed to answer the interrogatories as they relate to each individual defendant's individual capacity" "Based on these findings Defendants are directed to answer interrogatories Number 1-30 (excluding 17, 18, 19 and 20)" - end of quote -

Plaintiffs interpret the words "to each individual defendant" as meaning all defendants in their individual capacity to answer interrogatories.

Plaintiffs are requesting Clarification as defendants attorney may wish to limit answers to interrogatories to a select few defendants and argue reason for this. Clarification at this point will prevent further discovery disputes on this Matter. In order to get a clear picture of the challenged housing practice, Plaintiff agree that each defendant must answer interrogatories and if they do not wish to, statements must be made as to why they will not answer interrogatories.

Plaintiffs now put forth this Motion because of their limitations for time to acquire legal copies, research and most likely a second set of interrogatories after receiving answers to the first set of interrogatories all this is time consuming and puts Plaintiff at a disadvantage at being able to litigate adequately their Opposition and Complaint. Considering no Discovery items have yet been produced.

Plaintiffs are in agreement that if Discovery items as ordered are not received within a reasonable time that Defendants motion for Summary Judgment be denied and then this Case can move forward to trial and or any other sanctions as the Honorable Court deems fit.

Plaintiffs have a concern as to Defendants Questionable tactics in presenting altered or doctored Declaration in order to suit defendants attorneys need to escape liability. This is shown in Exhibit attached herein.

Plaintiffs pose Cannot understand how these two (2) separate declarations from Monica Lortz only 6 days apart from each other can fate a key element in the original and then leave this out in a exact duplicate declaration only 6 days later.

Plaintiffs will explain their suspicion and in Monica Lortz Declaration submitted as evidence in their Conference Letter brief defendants presented this before the Honorable Court faxed letter brief dated November 30th 2005.

a Declaration from Monica Fortz was used as evidence in that letter brief thus Declaration at page 2 paragraphs 3 and 4 state a key element - quote - "it was my expectation upon making the assignment that Anthony Nesbit would be assigned in a "Non-Gang" quad within Module C" and at line 4 "and it was my expectation upon making that assignment that William Kotis would be assigned to a Cell in a Non Gang quad.

Then 6 days later the same declaration is presented as evidence but it is altered or doctored every thing is suspiciously identical to the Original declaration except the key lines in Paragraph 3 and 4 which are underlined in Exhibits have been significantly changed from the Original as to leave out Key Elements in her Original Statement, the only persons that can alter, doctor this declaration are defendants attorneys

Plaintiffs Question is how can we get to the truth the Matter of answers are altered or doctored by defendants attorneys as the Exhibits presented herein suggest something Fishy and or suspicious has occurred here, who made the change, was the change known to Declarant if Yes why was the change made.

Plaintiffs point on this matter is what if all other Declarations and interrogatories become objects of alteration or doctoring by defendants attorneys deviating from their Original statements or intentionally excluding certain defendants answers to interrogatories that interfere and a how culpability how can the truth be ascertained when this is going on behind everyone backs Plaintiffs believe that certain defendants want to answer truthfully but are being prevented because of the Questionable tactics as described herein and as evidence suggest, what can be done to remedie this problem?

Plaintiffs only wish to present to the Honorable Court unassisted, uncoached, and undoctored answers to interrogatories and defendants declarations.

Plaintiffs are prose and do not know if tactics like
those are permissible if they are. Plaintiffs have no recourse
in this matter however if evidence suggest this is occurring
and it is not acceptable conduct then an appropriate solution
is warranted in order to get true and accurate statements
and answers to interrogatories.

Plaintiffs at this time even if they received the
Discovery Materials today Feb 1st of which they have not
do not have enough time to respond adequately in the
Time frame already set by the Honorable Court Feb 16th
2006 dead line for supplemental material in Opposition
to defendants Motion for Summary Judgment.

Plaintiffs believe that unattested, uncoached, and
uneducated answers to interrogatories as well as defendants
declarations will present genuine issue of material fact
as well as relevant supporting evidence for Opposition to
defendants Summary Judgment Motion.

Plaintiffs pray that the Honorable Court Consider
Plaintiffs Motion and request herein for Sanctions,
Clarification issue, a remedy or solution to get unattested
answers and declarations if relevant, and on large amount
of time to adequately litigate and respond 30 days or
what is reasonable to be determined by the Honorable
Court or reasonable alternative the Honorable Court
deems fit, still is not known when Ordered Discovery
Materials will be produced.

Respectfully Submitted
Date Feb 1st 2006

Anthony Vesbit
Plaintiff prose